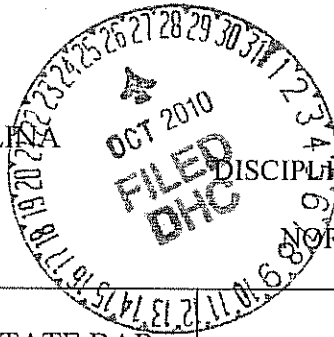


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 39

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ALBERT M. NEAL, Jr., Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Albert M. Neal, Jr. ("Neal"), was admitted to the North Carolina State Bar in 1973, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Neal was engaged in the practice of law in the State of North Carolina and maintained a law office in Candler, Buncombe County, North Carolina.

4. Neal was entrusted to maintain and appropriately disburse trust funds for the benefit of Gilbert Acee ("Acee"), first in 2004 by power of attorney and then in 2005 also as trustee of the trust established under Acee's mother's will for Acee's benefit.

5. Neal opened a checking account at Wachovia for Acee (last four account numbers 2552) (hereinafter the "Wachovia 2552 account") in November 2004.

6. Neal deposited funds received on Acee's behalf from Acee's mother's estate in the Wachovia 2552 account in the amount of \$8,600 on November 18, 2004.

7. Neal disbursed from Acee's funds in the Wachovia 2552 account \$1,968.88 by check #1004 dated December 1, 2004, \$1,106.13 by check #1005 dated December 1, 2004, and \$200.00 by check #1006 dated December 1, 2004 for Neal's personal benefit.

8. Entrusted funds were also held for Acee in the Mildred B. White Trust f/b/o Gilbert Morris Acee account at Wachovia, last four account numbers 7794 (hereinafter the "Mildred White trust account"). Neal disbursed funds from the Mildred White trust account pursuant to the power of attorney given to him by Acee

9. Neal disbursed the following of Acee's funds in the Mildred White trust account. Some or all of the amounts were deposited into Neal's personal account. For those amounts not deposited into Neal's account, there was no deposit of such funds into any account for Acee and no indication that Acee received those funds.

- a. \$4,000.00 on or about January 12, 2005, with \$3,200.00 deposited into Neal's personal bank account;
- b. \$3,000.00 on or about January 25, 2005, with \$2,600.00 deposited into Neal's personal bank account; and
- c. \$21,000.00 on or about February 4, 2005, with \$18,000.00 deposited into Neal's personal bank account.

10. Neal disbursed \$59,211.90 of Acee's funds in the Mildred White trust account on or about August 12, 2005. \$55,500.00 was deposited into the Evelyn M. Acee Trust account, established for the benefit of Acee and described in more detail below. The remaining funds were not deposited into any account for Acee and there is no indication that Mr. Acee received these funds.

11. Additional funds were held on Acee's behalf in an account at Merrill Lynch, last four account numbers 8594 (hereinafter the "Merrill Lynch account").

12. Neal disbursed the following of Acee's funds in the Merrill Lynch account. Some or all of the amounts were deposited into Neal's personal account. For those amounts not deposited into Neal's account, there was no deposit of such funds into any account for Acee and no indication that Acee received those funds.

- a. \$37,000.00 on or about April 6, 2005, all deposited into Neal's personal bank account; and
- b. \$14,500.00 on or about April 25, 2005, with \$7,900.00 deposited into Neal's personal bank account;

13. On or about May 19, 2005, \$167,308.16 was transferred from the Merrill Lynch account to a new account through White Oak Investments (hereinafter the "White

Oak Investments account”), established for the benefit of Acee. This transfer left a zero balance in the Merrill Lynch account.

14. On May 20, 2005, the Evelyn M. Acee Trust account was established at Asheville Savings Bank for funds held for the benefit of Acee. The initial deposit into this account was \$5,000.00 transferred from Acee’s funds in the White Oak Investments account. Over the subsequent few months, an additional \$53,000.00 of Acee’s funds were transferred from the White Oak Investments account to the Evelyn M. Acee Trust account as follows: \$10,000 on May 24, 2005; \$5,000 on June 6, 2005; \$20,000 on June 8, 2005; \$5,000 on July 14, 2005; \$7,000 on July 29, 2005; \$3,000 on August 5, 2005; and \$3,000 on August 15, 2005. These transfers were made pursuant to requests by Neal pursuant to the power of attorney given to him by Acee.

15. Neal disbursed the following of Acee’s funds in the Evelyn M. Acee Trust account. Some or all of the amounts were deposited into Neal’s personal account. For those amounts not deposited into Neal’s account, there was no deposit of such funds into any account for Mr. Acee and no indication that Mr. Acee received those funds.

- a. \$4,200.00 on or about May 20, 2005, with \$1,500.00 deposited into Neal’s personal bank account;
- b. \$3,800.00 on or about May 24, 2005, with \$1,100.00 deposited into Neal’s personal bank account;
- c. \$700.00 on or about May 26, 2005, with \$300.00 deposited into Neal’s personal bank account
- d. \$650.00 on or about May 27, 2005, with \$600.00 deposited into Neal’s personal bank account;
- e. \$2,000.00 on or about June 8, 2005, all deposited into Neal’s personal bank account;
- f. \$2,500.00 on or about June 10, 2005, with \$2,000.00 deposited into Neal’s personal bank account;
- g. \$2,600.00 on or about June 17, 2005, with \$1,000.00 deposited into Neal’s personal bank account;
- h. \$2,000.00 on or about June 21, 2005, with \$1,400.00 deposited into Neal’s personal bank account;
- i. \$1,000.00 on or about June 22, 2005, with all deposited into Neal’s personal bank account;

- j. \$1,000.00 on or about July 1, 2005, with \$500.00 deposited into Neal's personal bank account;
- k. \$300.00 on or about July 7, 2005, with all deposited into Neal's personal bank account;
- l. \$2,900.00 on or about July 14, 2005, with \$900.00 deposited into Neal's personal bank account;
- m. \$500.00 on or about July 15, 2005, with \$450.00 deposited into Neal's personal bank account;
- n. \$1,200.00 on or about August 1, 2005, with \$1,000.00 deposited into Neal's personal bank account;
- o. \$2,000.00 on or about August 2, 2005, with all deposited into Neal's personal bank account;
- p. \$1,000.00 on or about August 5, 2005, with \$975.00 deposited into Neal's personal bank account;
- q. \$2,000.00 on or about August 8, 2005, with \$1,900.00 deposited into Neal's personal bank account;
- r. \$1,200.00 on or about August 11, 2005, with \$500.00 deposited into Neal's personal bank account;
- s. \$2,000.00 on or about August 15, 2005, with all deposited into Neal's personal bank account;
- t. \$3,000.00 on or about August 15, 2005, with all deposited into Neal's personal bank account;
- u. \$3,000.00 on or about August 19, 2005, with \$2,800.00 deposited into Neal's personal bank account;
- v. \$5,000.00 on or about August 22, 2005, with \$4,000.00 deposited into Neal's personal bank account;
- w. \$300.00 on or about August 31, 2005, with all deposited into Neal's personal bank account;
- x. \$950.00 on or about September 6, 2005, with all deposited into Neal's personal bank account;

- y. \$400.00 on or about September 9, 2005, with all deposited into Neal's personal bank account;
- z. \$2,500.00 on or about September 16, 2005, with all deposited into Neal's personal bank account;
- aa. \$1,500.00 on or about September 19, 2005, with all deposited into Neal's personal bank account; and
- bb. \$1,000.00 on or about September 22, 2005, with \$800.00 deposited into Neal's personal bank account.

16. Another \$12,000.00 was disbursed from the White Oak Investments Account by check dated July 13, 2005 and mailed to Neal's post office box. Neal failed to deposit these funds into any account for Acee's benefit. \$6,000.00 was deposited into Neal's personal bank account in July 18, 2005.

17. The State Bar sent Neal a letter of notice inquiring into his handling of Acee's funds, to which Neal timely responded.

18. The State Bar served Neal with a subsequent inquiry letter by Sheriff on June 3, 2009. Neal's response was due 20 days from receipt. Neal failed to respond to this inquiry.

19. Neal was served by the State Bar with a subpoena for cause audit on July 30, 2009. Neal was required to produce the subpoenaed documents by August 17, 2009. Neal failed to comply with the subpoena.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and (3) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

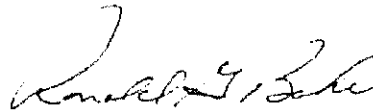
- (a) By failing to maintain Acee's funds in a general trust account or dedicated trust or fiduciary account separate and apart from his own funds, Neal failed to properly maintain entrusted property in violation of Rule 1.15-2(a);
- (b) By misappropriating Acee's funds for his own use and benefit, Neal used entrusted property for his own benefit in violation of Rule 1.15-2(j), engaged in criminal conduct in violation of Rule 8.4(b) and engaged in conduct involving misrepresentation, dishonesty, fraud, or deceit in violation of Rule 8.4(c); and

- (c) By failing to respond to the inquiries and subpoena of the North Carolina State Bar in its investigation of his handling of Acee's funds served upon him, Neal knowingly failed to respond to the lawful demands for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).


WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

The 26th day of October 2010.



Ronald G. Baker, Sr., Chair
Grievance Committee



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